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OFFICE OF PETITIONS

In re Application of	:	
Ozawa, et al.	:	DECISION DISMISSING
Application No. 10/658,872	:	PETITION
Filed: August 28, 2003	:	
Attorney Docket No. F-7936	:	

This is a decision on the papers styled, "Petition Under 37 CFR 1.131 Requesting Correction Of The Filing Date," filed August 23, 2004, which has been treated as a petition under 37 CFR 1.10(c), requesting that the above-identified application be accorded a filing date of August 26, 2003, rather than the presently accorded filing date of July 28, 2003. The petition was supplemented with a "Second Petition Under 37 CFR 1.10(c) Requesting Correction of the Filing Date," on September 20, 2004.

The petition is dismissed in part and granted in part.

Petitioners allege that the application was deposited in USPS Express Mail service on August 26, 2003. In support, the petition is accompanied by a copy of a USPS "Track & Confirm" document that indicates the Express Mail package with Express Mail label no. EV322920525US (the same number found on the new application transmittal) was received by the USPTO on August 28, 2003. It is noted that the USPS "Track & Confirm" document does not indicate when the item was actually deposited in the USPS Express Mail service. Furthermore, it is noted that USPTO records indicate application file no. 10/658,872 was filed on July 28, 2003.

Paragraph (c) of 37 CFR 1.10 states that:

"Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail"

mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit."

A grantable petition under 37 CFR 1.10(c) must include "a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit."

The petition filed August 23, 2004, is not accompanied by the required true copy of the "Express Mail" receipt. However, petitioner has submitted other official notation by the USPS in the form of the copy of the USPS "Track & Confirm" document. However, this document only shows the date of receipt of the item by the USPTO but fails to show the date of deposit, as required by 37 CFR 1.10(c)(3). As such, the filing date of August 26, 2003 cannot be found in the documentary evidence supplied by petitioner.

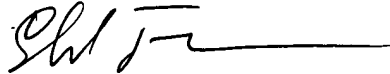
Accordingly, the petition filed August 23, 2004, does not contain the true copy of the "Express Mail" mailing label showing the "date-in" as required by the rule nor does it contain any other official notation by the USPS relied upon to show the date of deposit and as such must be dismissed.

However, it is noted that based on the documentary evidence that has been submitted, petitioner may contend that the above-identified application was, in fact, received by the USPTO on August 28, 2003. As illustrated by the USPS "Track & Confirm" information provided by petitioner, the Express Mail Label number placed on the application as filed, Express Mail Label No.

EV322920525US, was received by the USPTO on August 28, 2003. As noted in the "Second Petition Under 37 CFR 1.10(c) Requesting Correction of the Filing Date," on September 20, 2004, "applicants respectfully requests reconsideration and that the above-identified application be considered as having been received by the USPTO on August 28, 200[3]." As the documentary evidence indicates the package containing the above-identified application and bearing Express Mail Label No. EV322920525US was received by the USPTO on August 28, 2003, this request is granted.

The application is being returned to the Office of Initial Patent Examination for processing with a filing date of August 28, 2003 and issuance of a corrected filing receipt.

Telephone inquiries should be directed to the undersigned at (571)272-3228.



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